

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

RAPHAEL D. PERSON, JR.,

Petitioner/Defendant,

v.

UNITED STATES OF AMERICA,

Respondent/Plaintiff.

**Case Nos. 2:21-cv-3976
2:13-cr-217**

Judge Graham

Magistrate Judge Deavers

OPINION AND ORDER

This matter is before the Court on the report and recommendation (“R&R”) of Magistrate Judge Deavers, Doc. 277. The Magistrate Judge recommends that the Court grant Respondent the United States of America’s Motion to Dismiss, Doc. 275, and deny Petitioner’s 28 U.S.C. § 2255 petition, Doc. 273. Petitioner has filed objections to the Magistrate Judge’s R&R. Doc. 282. Petitioner objects to the Magistrate Judge’s conclusion that equitable tolling does not save his petition from being barred by the statute of limitations because he did not diligently pursue his rights. Doc. 282 at 2-3.

Pursuant to 28 U.S.C. § 636(b)(1), this Court has conducted a *de novo* review of the portions of the R&R to which Petitioner objects. As the Magistrate Judge correctly noted, to obtain equitable tolling of the statute of limitations, a litigant must establish “(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstances stood in his way.” *Holland v. Florida*, 560 U.S. 631, 649 (2010) (citation omitted). The Magistrate Judge found that the only evidence that Petitioner was pursuing his rights diligently is a letter dated October 30, 2020, after the statute of limitations had expired. She concluded that Petitioner “did not diligently pursue his rights, and thus has failed to meet the first element for equitable tolling.” Doc. 277 at 4. The Court

agrees. Therefore, Petitioner's objections are **OVERRULED**. The R&R is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

IT IS SO ORDERED.

s/ James L. Graham
JAMES L. GRAHAM
United States District Judge

DATE: February 9, 2022